

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 09-47927

JOSEPH SMITH,

Chapter 13

Debtor.

Judge Thomas J. Tucker

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**ORDER DISAPPROVING, WITHOUT PREJUDICE,  
PROPOSED POST-CONFIRMATION PLAN MODIFICATION**

This case is before the Court on a proposed post-confirmation plan modification, filed on September 8, 2014 by Debtor's attorney of record (Docket # 37, the "Plan Modification"). The Plan Modification seeks to modify the Debtor's confirmed Chapter 13 plan to excuse "a delinquency in Debtor's plan payments in the amount of \$2,280.00," due to the Debtor's death on February 27, 2013.

The Court must disapprove the Plan Modification, because the Plan Modification does not show that it was filed by or on behalf of anyone with standing to propose a plan modification in this case. The Debtor died long before the Plan Modification was filed, so Debtor's attorney had no authority to file the Plan Modification on behalf of the Debtor. From the perspective of the Debtor, only a personal representative duly appointed by the probate court under the laws of the State of Michigan may file a motion for a post-confirmation plan modification, in the case of a deceased debtor. *Cf.* Mich. Comp. Laws Ann. § 700.3103 (stating, in relevant part, that "[e]xcept as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a decedent's personal representative, a person must be appointed by the register or by court order, must qualify, and must be issued letters"); Mich. Comp. Laws Ann. § 700.3703(3) (stating that "[e]xcept as to a proceeding that does not survive the decedent's

death, a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of another jurisdiction as the decedent had immediately prior to death”); *In re Hamilton*, 274 B.R. 266, 267 (W.D. Tex. 2001) (citing *In re Lucio*, 251 B.R. 705, 708-09 (Bankr. W.D. Tex. 2000)) (“[W]hen a debtor dies, the only person who can then appear on the debtor’s behalf is the person so named as the official representative of the probate estate of the debtor.”)

Accordingly,

IT IS ORDERED that the Plan Modification (Docket # 37), is disapproved, without prejudice to the right of any of the following to file a proposed plan modification under 11 U.S.C. § 1329(a)(1): (1) a duly appointed personal representative of the deceased Debtor; (2) the Chapter 13 Trustee; and (3) a holder of an allowed unsecured claim.

**Signed on September 12, 2014**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**